

Medicines administered to animals do not qualify for the low rate of tax applicable to medicines and drugs. See 86 Ill. Adm. Code 130.310 (this is a GIL).

April 4, 2002

Dear Xxxxx:

This is in response to your letter dated February 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

I am writing to you on behalf of our client (ABC Co.) which is requesting a General Information Letter (GIL), pursuant to 2 Ill. Admin. Code Sec. 1200.120. The GIL should address the rules for application of Retailers' Occupation Tax (ROT) as they relate to retail sale transactions in Illinois. GILs respond to inquiries made by taxpayers or their representatives. We understand that GILs discuss tax principles or applications and are not binding on the Illinois Department of Revenue (the IDOR).

FACTS

ABC Co. is in the business of making retail sales of consumer merchandise including over-the-counter medicines and prescription drugs to treat, prevent, and control human illness and disease. ABC Co. sells prescription drugs to individuals through pharmacies located at its retail outlets. ABC Co. usually fills these prescriptions from an inventory stock of drugs purchased from drug manufacturers which intend them for the treatment of human illness and disease.

ABC Co. sometimes fills prescriptions which Doctors of Veterinary Medicine (DVMs) write for individuals' pet animals. The prescriptions are for drugs whose manufacturers intend them for human use. ABC Co.'s pharmacists fill the DVM prescriptions in the same manner as they would any other prescription and from the same stock of drugs from which they fill prescriptions written by Medical Doctors (MDs).

ABC Co. also fills prescriptions which DVMs write for individuals' pet animals for drugs intended by their manufacturers for use solely on animals. Because ABC Co. is not usually in the business of selling drugs or medicines for animal use, it must special order them from the drug manufacturer.

ISSUE

Should the prescriptions written by DVMs that are for the same drugs the manufacturer intends for human use be taxed at the regular or low rate?

DISCUSSION

Law

Illinois imposes the Retailers' Occupation Tax (the ROT) on persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The tax rate imposed is generally equal to 6.25 percent of gross receipts from the sale. 35 ILCS 120/2-10.

Illinois also imposes the Service Occupation Tax (the SOT) on all persons transferring tangible personal property as incidental to making sales of service. 35 ILCS 115/3. The tax is levied on tangible personal property transferred in making sales of service. *Id.*, 86 Ill. Admin. Code 140.101(a). The tax imposed is generally equal to 6.25 percent of the selling price of the property transferred. The SOT is imposed at the low tax rate on transfers of prescription and non-prescription medicines and drugs sold for human use. 35 ILCS 120/2-10 and 35 ILCS 115/3-10. 35 ILCS 115/3-10 provides that the ROT/SOT is imposed:

at the rate of 1% on food *for human consumption* (emphasis added) that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption and is not otherwise included in this paragraph) and prescription and nonprescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing materials, syringes, and needles used by diabetics, for *human use* (emphasis added).

The IDOR's regulations define medicines and drugs subject to the low tax rate as 'any pill, powder, potion, salve, or other preparation *intended by the manufacturer* (emphasis added) for human use and which purports on the label to have medicinal qualities.' 86 Ill. Admin. Code 130.310(c)(1). The SOT regulations complement the ROT in this aspect. 86 Ill. Admin. Code 140.120(b). The IDOR has repeatedly in General Information Letters (GILs) and Private-Letter Rulings (PLRs) focused on this regulatory provision for determining whether a drug or medicine should be afforded low tax-rate treatment. ST-00-0002-GIL (1/3/00), ST-99-0299-GIL (9/30/99), 96-0028-PLR (1/18/96), 95-0408-PLR (10/11/95), 95-0077-PLR (2/21/95).

In determining whether an item is a drug or medicine for human use -- and thus subject to the low tax rate -- the IDOR has reviewed their manufacturers' product labels. In GIL 99-0299, for example, the IDOR determined the low-rate taxability of certain drugs based on information provided on the manufacturers' product labels. Similarly, in GIL 00-0002 the IDOR looked to the manufacturer's label to determine whether the lower rate of tax applied to certain medicines. Thus, in ascertaining whether certain drugs or medicines qualified for low tax-rate treatment, the IDOR has focused upon their manufacturers' intentions -- and not the intentions of the servicepersons, purchasers, or physicians involved in their sale. By way of significant contrast, IDOR Regulations distinguish food subject to the low tax as 'any solid, liquid, powder, or item *intended by*

the seller (emphasis added) primarily for human internal consumption.’ 86 Ill. Admin. Code 130.310(b)(1). Had the IDOR intended to impose the regular tax rate on drugs based on the *seller's* intent, it would have used language similar to that of the food regulation. Instead, the IDOR clearly draws a distinction between food and drug sales by limiting the low tax rate only to drugs intended by *their manufacturer* to be used for human use.

The IDOR has also issued several GILs and PLRs opining that sales of medicines not designed by their manufacturers for human consumption are subject to the regular tax rate. ST 01-0190-GIL (9/24/01), ST 95-0408 (10/11/95), ST 95-0077 (2/21/95), ST-89-0166 (3/7/89), PLR 87-0323 (5/8/87), and PLR 84-0415 (4/5/84). These GILs and PLRs address persons treating animals or selling products designed for animals -- namely, owners of animal hospitals, veterinary-supply distributors, or veterinarians. In PLR 95-0408, the taxpayer sold prescription drugs to professionals including veterinarians. The IDOR ruled that the low rate applies to sales of prescription pharmaceuticals, medications and food products as long they are a ‘pill, powder, potion, salve, or other preparation intended for human use which purports on the [manufacturer's] label to have medicinal qualities.’ ST 01-0190-GIL addresses an animal hospital that pays tax at the regular rate on all prescription items sold. The IDOR indicated they could not determine if the taxpayer was using the proper method based on the limited information in the letter. However, the IDOR did state that ‘you are correct that the 6.25% rate plus the local tax is the proper tax rate for sales of medicines and foods that are *not designed for human consumption*’ (emphasis added). The IDOR, citing the relevant regulation, agreed with the taxpayer's payment of the regular tax rate in stating that the ‘reduced [low] rate is only applicable for medicines [and] drugs...intended [by their manufacturer] for human use.’

ANALYSIS

ABC Co. fills two types of prescriptions written by DVMs. The most prevalent are prescriptions filled from the same stock of drugs from which MD's prescriptions are filled. The second are prescriptions specially ordered from manufacturers of animal drugs and medicines. ABC Co. does not stock animal prescription medicines, since it rarely sells them.

ABC Co. fills the first type of prescription from a stock of drugs purchased from manufacturers which intend them for human use. For example, stocks of antibiotics and tranquilizers used to fill human prescriptions may also be used for animals. IDOR regulations and rulings in this regard emphasize consistently that it is the manufacturer's intention which distinguishes drugs and medicines subject to the low tax rate.

ABC Co. may measure its SOT liability on drugs intended by their manufacturers to be for human use at the low rate even when it sells such drugs to customers who will use the drugs on animals. This is because Illinois regulations clearly provide that drugs intended by their manufacturers for human use are subject to the low rate. Conversely, IDOR regulations and rulings have not qualified this test in order to deny low tax rate treatment to such drugs if they are ultimately used to treat animals. Presumably, the IDOR has not qualified the test because it would be impossible -- and an undo burden -- for the serviceperson to know always how a customer actually uses a drug. This is why the IDOR has differentiated the tests for food and drug use. For food to qualify for the low tax rate, it must be *intended by the seller* to be for human use while drugs must be *intended by the manufacturer* to be for human use. The IDOR's reasoned distinction

between food and drugs is clear. Had the IDOR intended to impose the regular tax rate on drugs based on the *seller's* intent, it would have used language similar to that of the food regulation. Instead, the IDOR clearly draws a distinction between food and drug sales by limiting the low tax rate only to drugs intended by the *manufacturer* to be used for human use. A contrary reading would frustrate the plain language of the IDOR's regulation. Thus, for compliance purposes it is more reasonable and uniform to assign tax rates based on an indisputable measure, i.e., the manufacturers' intent, just as the IDOR regulations provide.

The IDOR has followed this analysis in letter rulings when deciding the proper rate of tax to apply to drugs. In GIL 99-0299, the IDOR looked only at the manufacturer's labels to determine whether a drug qualified for the low tax rate. Similarly, in GIL 00-0002, the IDOR's tax determination was made by reviewing product labels to examine the manufacturer's intent. Both GILs evidence that the IDOR looks to the intended *purpose* of the drug--that it have medicinal effects upon humans--rather than a drug's ultimate use to determine its proper sales tax rate. ABC Co. purchases its drug supply virtually entirely from vendors who manufacture drugs for human use. When ABC Co. purchases the drugs, they qualify under the definition of a 'drug' per Regulation 130.310. Accordingly, ABC Co. subjects them to the low tax rate. If ABC Co. were to do otherwise, it would violate the clear language of Regulation 130.310.

CONCLUSION

Based on the forgoing facts, we believe that the DVM prescriptions filled from the stock of drugs intended by their manufacturer for human use should be taxed at the low rate. This conclusion should be consistent with state law, IDOR regulations, and prior IDOR rulings.

Your care in responding to our request for a General Information Letter is very much appreciated.

Retailers' Occupation Tax is imposed on gross receipts from the sale of tangible personal property, absent a specific exemption. Although the rate of sales tax applicable to sales of general merchandise is 6.25% (plus applicable local taxes), a reduced rate of tax is authorized by Section 2-10 of the Retailers' Occupation Tax Act for prescription and non-prescription medicines and medical appliances for human use. Qualifying medicines and medical appliances are taxed at the lower rate of 1%, plus applicable local taxes. See, 35 ILCS 120/2-10.

We are unable to issue the ruling that you request. Medicines administered to animals do not qualify for the low rate of tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 2 Ill. Adm. Code 1200.110(b), which can be obtained from the Department Web site.

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.